

**TOWN COUNCIL ACTION ITEM
STAFF SUMMARY
November 23, 2021 SPECIAL COUNCIL MEETING**

DATE: November 23, 2021

AGENDA ITEM NUMBER: 4

ACTION TO BE CONSIDERED: Consideration of Second Amendment to Development Agreement with Uptown 240

BACKGROUND/TIME FRAME:

- The Town and Developer are parties to a Development Agreement dated April 2, 2019, in which the Developer agreed to construct certain public improvements necessitated by the impacts of the Development that are further described in the Development Agreement.
- The Developer has had a delay in the construction of the Development and Public Improvements where the Town and the Developer agreed to the First Amendments to the Development Agreement on January 19, 2021.
- On October 1, 2021, Town delivered to the Developer a notice of Default under the Development Agreement relating to Developer's failure to deliver the Improvement Guarantee by the date of September 30, 2021, set forth in the First Amendment.
- The Developer now anticipates closing on a bridge loan in late November or early December 2021, and a construction loan in the first quarter of 2022. The Developer has indicated that construction on the Development, including the Public Improvements, will recommence as soon as possible thereafter, when weather permits.
- On November 16, 2021, the Town Council reviewed, discussed and considered the draft of the Second Amendment to the Development Agreement with Uptown 240 and decided to call a Special Town Council Meeting on November 23, 2021, to discuss and consider approval of the Second Amendment.

SUMMARY:

The Second Amendment includes the following provisions:

- The Developer anticipates closing on a Bridge Loan in late November or Early December 2021.
 - Developer shall notify the Town in writing upon the Developer's discovery that the Bridge Loan will not close by December 15, 2021. Such notice shall contain the Developer's anticipated date of closing on the Bridge Loan.
- If it becomes apparent to Developer that the Bridge Loan will not close with Developer's current financier, the Developer shall notify the Town in writing as soon as practicable, but in no event later than seven (7) days following the Developer's discovery of the same.
- Should Developer fail to close on the Bridge Loan by December 31, 2021:
 - The Town shall have the right, but not the obligation, to remove all materials, construction equipment, trash dumpsters, trailers, fencing, barriers and any other items from Town-owned right-of-way, and to relocate such items to a safe storage area. The Town will notify Developer in writing prior to exercising the Town's right pursuant to this subsection, which notice shall indicate the location at which items removed from the Town-owned right-of-way will be stored. Developer agrees to indemnify and hold the Town harmless from any damage to such items, should the Town exercise its right pursuant to this subsection. Developer shall reimburse the Town for its costs related to the Town's exercise of its right under this subsection.

- Developer shall provide to the Town Engineer for approval a written plan, developed in coordination with crane owner, for removing the crane from the site in the event that Developer fails to close on the Bridge Loan with Developer's current financier.
- Developer shall remove or cause to be removed the crane from Developer's property, in accordance with the Crane Removal Plan, if construction on the Development has not commenced by August 30, 2022, subject to one written extension by the Town Manager for good cause shown.
- The Developer anticipates closing on a Construction Loan in the first quarter of 2022.
- The agreement will withdraw the Town's Default Notice.
- The construction and completion of public improvements will be completed no later than October 31, 2022.
 - If the developer fails to complete the public improvements by October 31, 2022, the developer will have fifteen (15) days to remove all materials out of the Town right-of-way.
 - The developer will remediate public safety hazards in Town right-of-way on Lake Dillon Drive.
 - The Town will use the partial Improvement Guarantee of \$16,000 to acquire concrete jersey barriers to be placed on the south side of the right-of-way between the Uptown 240 and Homewood Suites properties.
 - Costs incurred by the Town will be added to the amount of the Improvement Guarantee due from the Developer.
- The remaining Improvement Guarantee will be delivered to the Town within ten (10) days of receipt of the proceeds from the Construction Loan or April 2, 2022, whichever occurs first.
- The Town's liens filed against the property for unpaid attorney fees and unpaid utility charges will be paid by the Developer within ten (10) days of the Developer's receipt of the Bridge Loan.

BUDGET IMPACT: TBD

COUNCIL GOALS:

- The Town of Dillon supports cultural, recreational and educational amenities and opportunities that enhance the Town's unique qualities.
- The Town of Dillon provides conscientious stewardship of Dillon's resources, amenities and environment, now and into our future.
- The Town of Dillon promotes community revitalization and supports sustainable development of a thriving and vital community.

STAFF RECOMMENDATION:

Staff recommends approval of the Second Amendment to the Development Agreement with Uptown 240.

DEPARTMENT HEAD RESPONSIBLE: Nathan Johnson, Town Manager

RESOLUTION NO. 44-21
Series of 2021

**A RESOLUTION APPROVING A SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT IN CONNECTION WITH THE UPTOWN
240 PUD DEVELOPMENT PLAN**

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE
TOWN OF DILLON, COLORADO, AS FOLLOWS:**

Section 1. The Second Amendment to Development Agreement (“Second Amendment”) in connection with the Uptown 240 PUD Development Plan, by and between the Town of Dillon and Uptown 240 LLC, is hereby approved in essentially the same form as accompanies this resolution.

Section 2. The Mayor is hereby authorized to execute the Second Amendment, and is further authorized to negotiate and approve on behalf of the Town such revisions as the Mayor determines are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Second Amendment are not altered.

Section 3. The Mayor, Town Manager and Town Staff are further authorized to do all things necessary on behalf of the Town to perform the obligations of the Town under the Second Amendment.

**APPROVED AND ADOPTED THIS 23rd DAY OF NOVEMBER, 2021 BY THE
TOWN COUNCIL OF THE TOWN OF DILLON, COLORADO.**

TOWN OF DILLON,
a Colorado municipal corporation

By: _____
Carolyn Skowrya, Mayor

ATTEST:

Adrienne Stuckey, Town Clerk

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
UPTOWN 240 PUD DEVELOPMENT PLAN

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Second Amendment**”) is entered into as of _____, 2021 (the “**Effective Date**”), by and between the **Town of Dillon**, a Colorado home rule municipal corporation (“**Town**”), and **Uptown 240 LLC**, a Colorado limited liability company (“**Developer**”). Town and Developer, collectively, are hereinafter referred to as the “**Parties**”.

RECITALS:

A. Town and Developer are parties to that certain Development Agreement dated as of April 2, 2019 (the “**Development Agreement**”), and recorded with the Summit County Clerk and Recorder on April 26, 2019, at Reception No. 1196271, in which the Developer agreed to construct certain public improvements necessitated by the impacts of the Development as more particularly described in the Development Agreement (the “**Public Improvements**”).

B. After a delay in the construction of the Development and Public Improvements, as defined in the Development Agreement, the Parties amended the Development Agreement by that certain First Amendment to Development Agreement, dated as of January 2021 (the “**First Amendment**”), and recorded with the Summit County Clerk and Recorder on _____, 2021, at Reception No. _____.

C. The Town incurred substantial attorneys’ fees in negotiating and executing the Development Agreement and the First Amendment.

D. Construction of the Development has been furthered delayed due to delays in the Development financing.

E. On October 1, 2021 Town delivered to Developer a notice of Default under the Development Agreement relating to Developer’s failure to deliver the Improvement Guarantee by the date set forth in the First Amendment (the “**Default Notice**”).

F. The Developer now anticipates closing on a bridge loan in late November or early December 2021 (the “**Bridge Loan**”), and a construction loan in the first quarter of 2022 (the “**Construction Loan**,” and together with the Bridge Loan, the “**Development Financing**”), and that construction on the Development, including the Public Improvements, will recommence as soon as possible thereafter, when weather permits.

G. In view of the above, the Developer has requested that the Town withdraw the Default Notice and agree to an extension of the dates by which the Improvement Guarantee must be delivered to the Town and to a date by which construction of the Public Improvements must be substantially completed and inspected by the Town for preliminary construction acceptance.

H. The Town is agreeable to the withdrawal of the Default Notice and an extension of dates for delivery of the Improvement Guarantee and the substantial completion date for the Public Improvements, subject to the terms and conditions of this Second Amendment.

I. Developer entered into to that certain Property Tax Increment Rebate Agreement with the Dillon Urban Renewal Authority (“**DURA**”) on July 10, 2020 (“**TIF Agreement**”).

J. In an effort to secure financing on the TIF Agreement, the Developer requested that DURA agree to an amendment to the TIF Agreement.

K. Pursuant to Developer’s request, DURA and Developer negotiated and entered into that certain Amended and Restated Property Tax Increment Agreement, dated April 5, 2021 (“**Amended TIF Agreement**”). Pursuant to Section 2-3-130 of the Dillon Municipal Code (the “**Code**”), any and all legal, engineering and administrative expenses incurred by the Town in direct response to requests from individuals, partnerships, corporations and any other groups shall be the responsibility of said requesting party and not of the Town.

L. On May 28, 2021, in accordance with Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement, the Town invoiced Developer for attorneys’ fees incurred by the Town and DURA, between September 2019 and April 2021, (a) in review of plans and materials Developer was required to furnish to the Town pursuant to the Code and in accordance with the Development Agreement, (b) in review and negotiation of the First Amendment, and (c) in review and negotiation of the Amended TIF Agreement.

M. Following Developer’s failure to pay the Town’s invoice, on October 1, 2021, the Town filed a lien on the Developer’s property to secure payment of attorneys’ fees incurred by the Town between September 2019 and April 2021.

N. As of the Effective Date of this Second Amendment, the Developer has not paid attorneys’ fees incurred by the Town as required pursuant to Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement.

O. The Town and Developer desire, by this Second Amendment, to set forth the parties’ agreement as to Developer’s reimbursement to the Town of attorneys’ fees incurred by the Town in review of the Amended TIF Agreement, as required pursuant to Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement.

P. As of the Effective Date, Developer has not paid monthly bills for usage of Town-owned utilities on Developer’s property, as required pursuant to Chapter 13 of the Code.

Q. On October 1, 2021, the Town filed a lien on the Developer’s property to secure payment of the Developer’s unpaid utility charges.

R. The Town and Developer desire, by this Second Amendment, to set forth the parties’ agreement as to Developer’s payment of past due utility bills.

S. The Town and Developer further desire, by this Second Amendment, to clarify the Developer’s continuing obligation to reimburse the Town for attorneys’ fees incurred by the Town as required pursuant to Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Withdrawal of Default Notice.** Effective upon execution of this Second Amendment, the Town hereby withdraws its Default Notice.

2. **Amendment to Section 1.6(b) of the Development Agreement.** Subsection (b) of Section 1.6 is amended to read as follows:

“(b) Construction of the Public Improvements shall be complete, and preliminary construction acceptance of the Public Improvements shall be requested, by no later than October 31, 2022 (the “**Public Improvement Completion Deadline**”).

3. **Amendment to Section 1.13(a) of the Development Agreement.** The first sentence of Section 1.13(a) of the Development Agreement is amended to read as follows:

“Developer shall submit to the Town an Improvement Guarantee in the amount of \$264,246.40, together with such additional amounts attributable to the Alley Work as described in Section 4.2 of this Second Amendment, within ten (10) days of receipt of the proceeds from the Construction Loan or April 2, 2022, whichever occurs first (the “**Improvement Guarantee Deadline**”). Developer shall not commence any construction on the Development or Public Improvements prior to providing the Town with the Improvement Guarantee in the above-stated amount. Developer shall use commercially reasonable efforts to commence construction on the Lake Dillon Drive Public Improvements on or before August 30, 2022, weather permitting. If Developer fails to deliver the Improvement Guarantee by the Improvement Guarantee Deadline, in addition to any other remedies provided to Town under the Code, the Development Agreement or otherwise available under law or equity, Town shall have the right, but not the obligation, to complete the Public Improvements and the costs of such work, including administrative costs and reasonable attorney’s fees shall be a continuing and perpetual lien against the Development until such amount have been paid.

4. **Amendment to Section 8.6 of the Development Agreement.** Section 8.6 of the Development Agreement is amended to replace the Developer’s address for notices as follows:

Uptown 240 LLC

2200 Market St. Unit 736

Denver CO, 80205

5. **Additional Developer Obligations.**

5.1 Should Developer fail to complete construction on the Public Improvements by the Public Improvement Completion Deadline, within fifteen (15) days of receiving written notice of

the same from the Town, Developer shall remove all materials, construction equipment, trash dumpsters and trailers from Town-owned right-of-way, and relocate all fencing and barriers to allow safe, public use of the sidewalk adjacent to the Development, all to the satisfaction of the Town Engineer. Developer must ensure fencing and barriers are relocated so as to protect pedestrians using the sidewalk and vehicles using the road within the public right-of-way from the uncompleted work on Developer's property. Because Developer has removed the retaining wall that supported the west side of the public sidewalk adjacent to the Lake Dillon Drive property line, subsequently making the sidewalk unsafe to walk on, the Developer shall re-establish the physical support mechanism on the Developer's property along the west side of the public sidewalk along the entire Lake Dillon Drive property line by either constructing a new retaining wall or installing another support solution designed by a licensed professional engineer.

5.2 Developer shall notify the Town in writing upon the Developer's discovery that the Bridge Loan will not close by December 15, 2021. Such notice shall contain the Developer's anticipated date of closing on the Bridge Loan.

5.3 If it becomes apparent to Developer that the Bridge Loan will not close with Developer's current financier, the Developer shall notify the Town in writing as soon as practicable, but in no event later than seven (7) days following the Developer's discovery of the same.

5.4 Should Developer fail to close on the Bridge Loan by December 31, 2021:

5.4.1 The Town shall have the right, but not the obligation, to remove all materials, construction equipment, trash dumpsters, trailers, fencing, barriers and any other items from Town-owned right-of-way, and to relocate such items to a safe storage area. The Town will notify Developer in writing prior to exercising the Town's right pursuant to this subsection, which notice shall indicate the location at which items removed from the Town-owned right-of-way will be stored. Developer agrees to indemnify and hold the Town harmless from any damage to such items, should the Town exercise its right pursuant to this subsection. Developer shall reimburse the Town for its costs related to the Town's exercise of its right under this subsection.

5.4.2 Developer shall provide to the Town Engineer for approval a written plan, developed in coordination with crane owner, for removing the crane from the site in the event that Developer fails to close on the Bridge Loan with Developer's current financier ("**Crane Removal Plan**").

5.5 Developer shall remove or cause to be removed the crane from Developer's property, in accordance with the Crane Removal Plan, if construction on the Development has not commenced by August 30, 2022, subject to one written extension by the Town Manager for good cause shown.

5.6 As part of the Developer's contractual obligation to construct Public Improvements necessitated by the impacts of the Development, Developer shall remediate the public safety hazards caused by the settling of utility trenches within the Lake Dillon Drive right-of-way to the satisfaction of the Town Engineer.

5.7 Town shall use funds placed with the Town by Developer prior to the date of this Second Amendment as a partial Improvement Guarantee to place and maintain concrete jersey barricades along the south side of the 40' right-of-way between the Uptown 240 and Homewood Suites properties so as to protect pedestrians and vehicles using the Alley from the drop off between the Uptown 240 and Homewood Suites properties (the "**Alley Work**"). Costs incurred by the Town associated with the Alley Work will be added to the amount of the Improvement Guarantee due from Developer as set forth above.

5.8 Should Developer fail to comply with Sections 2, 3, and 5 of this Second Amendment, the Town may exercise its rights under the Development Agreement to complete the work and draw on the partial Letter of Credit Developer provided to the Town. The Town expressly retains and reserves all rights and remedies provided to the Town under the Development Agreement, as amended.

5.9 Developer shall pay to the Town all past due utility bills within ten (10) days of Developer's receipt of the Bridge Loan. The Town expressly retains and reserves all of its enforcement rights and remedies pursuant to Chapter 13 of the Dillon Municipal Code, and may exercise them for Developer's failure to pay any applicable utility charges.

5.10 Developer shall pay to the Town all attorneys' fees incurred by the Town between September 2019 and April 2021, (a) in review of plans and materials Developer was required to furnish to the Town in accordance with the Development Agreement, (b) in review and negotiation of the First Amendment, and (c) in review and negotiation of the Amended TIF Agreement, as required pursuant to Section 2-3-130 of the Dillon Municipal Code and Section 1.4(b) of the Development Agreement, within ten (10) days of Developer's receipt of the Bridge Loan.

5.11 Developer shall discharge any liens placed on Developer's property by the Town within ten (10) days of Developer's receipt of the Bridge Loan.

5.12 Developer shall reimburse the Town for all reasonable attorneys' fees incurred by the Town between April 2021 and the Effective Date, including but not limited to all attorneys' fees incurred by the Town in reviewing and negotiating this Second Amendment, as required pursuant to Section 2-3-130 of the Dillon Municipal Code and Section 1.4(b) of the Development Agreement, within thirty (30) days of invoicing by the Town. The Developer's obligation to pay attorneys' fees incurred by the Town in connection with the Development is a continuing obligation throughout the term of the Development Agreement, as amended.

6. Miscellaneous.

6.1 Capitalized Terms. Capitalized terms not defined in this Second Amendment have the meanings given them in the Development Agreement.

6.2 Governing Law. This Second Amendment and all matters arising hereunder or in connection herewith shall be governed by and construed and enforced in accordance with the laws of the State of Colorado.

6.3 Ratification. Except as amended by this Second Amendment, the Development Agreement, as amended by the First Amendment, is hereby ratified and affirmed and shall continue in full force and effect. All references to the “Development Agreement” will be deemed to refer to the Development Agreement as amended by the First Amendment and this Second Amendment.

6.4 Successors and Assigns. This Second Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6.5 Effect of Headings. Headings appearing in this Second Amendment are inserted for convenience of reference only and shall in no way be construed to be interpretations of the provisions hereof.

6.6 Counterparts. This Second Amendment may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the Effective Date.

Town:

THE TOWN OF DILLON, COLORADO,
a Colorado home rule municipal corporation

By: _____
Mayor _____

ATTEST:

Town Clerk

Developer:

UPTOWN 240 LLC,
a Colorado limited liability company

By: _____

Printed Name: _____

Title: _____

**SECOND AMENDMENT TO DEVELOPMENT AGREEMENT
UPTOWN 240 PUD DEVELOPMENT PLAN**

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RECITALS:

A. Town and Developer are parties to that certain Development Agreement dated as of April 2, 2019 (the “**Development Agreement**”), and recorded with the Summit County Clerk and Recorder on April 26, 2019, at Reception No. 1196271, in which the Developer agreed to construct certain public improvements necessitated by the impacts of the Development as more particularly described in the Development Agreement (the “**Public Improvements**”).

B. After a delay in the construction of the Development and Public Improvements, as defined in the Development Agreement, the Parties amended the Development Agreement by that certain First Amendment to Development Agreement, dated as of January 2021 (the “**First Amendment**”), and recorded with the Summit County Clerk and Recorder on _____, 2021, at Reception No. _____.

C. The Town incurred substantial attorneys’ fees in negotiating and executing the Development Agreement and the First Amendment.

D. Construction of the Development has been furthered delayed due to delays in the Development financing.

E. On October 1, 2021 Town delivered to Developer a notice of Default under the Development Agreement relating to Developer’s failure to deliver the Improvement Guarantee by the date set forth in the First Amendment (the “**Default Notice**”).

F. The Developer now anticipates closing on a bridge loan in late November or early December 2021 (the “**Bridge Loan**”), and a construction loan in the first quarter of 2022 (the “**Construction Loan**,” and together with the Bridge Loan, the “**Development Financing**”), and that construction on the Development, including the Public Improvements, will recommence as soon as possible thereafter, when weather permits.

G. In view of the above, the Developer has requested that the Town withdraw the Default Notice and agree to an extension of the dates by which the Improvement Guarantee must be delivered to the Town and to a date by which construction of the Public Improvements must be substantially completed and inspected by the Town for preliminary construction acceptance.

H. The Town is agreeable to the withdrawal of the Default Notice and an extension of dates for delivery of the Improvement Guarantee and the substantial completion date for the Public Improvements, subject to the terms and conditions of this Second Amendment.

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L. On May 28, 2021, in accordance with Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement, the Town invoiced Developer for attorneys’ fees incurred by the Town and DURA, between September 2019 and April 2021, (a) in review of plans and materials Developer was required to furnish to the Town pursuant to the Code and in accordance with the Development Agreement, (b) in review and negotiation of the First Amendment, and (c) in review and negotiation of the Amended TIF Agreement.

M. Following Developer’s failure to pay the Town’s invoice, on October 1, 2021, the Town filed a lien on the Developer’s property to secure payment of attorneys’ fees incurred by the Town between September 2019 and April 2021.

N. As of the Effective Date of this Second Amendment, the Developer has not paid attorneys’ fees incurred by the Town as required pursuant to Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement.

O. The Town and Developer desire, by this Second Amendment, to set forth the parties’ agreement as to Developer’s reimbursement to the Town of attorneys’ fees incurred by the Town in review of the Amended TIF Agreement, as required pursuant to Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement.

P. As of the Effective Date, Developer has not paid monthly bills for usage of Town-owned utilities on Developer’s property, as required pursuant to Chapter 13 of the Code.

Q. On October 1, 2021, the Town filed a lien on the Developer’s property to secure payment of the Developer’s unpaid utility charges.

R. The Town and Developer desire, by this Second Amendment, to set forth the parties’ agreement as to Developer’s payment of past due utility bills.

S. The Town and Developer further desire, by this Second Amendment, to clarify the Developer’s continuing obligation to reimburse the Town for attorneys’ fees incurred by the Town as required pursuant to Section 2-3-130 of the Code and Section 1.4(b) of the Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants of the Parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Withdrawal of Default Notice.** Effective upon execution of this Second Amendment, the Town hereby withdraws its Default Notice.

2. **Amendment to Section 1.6(b) of the Development Agreement.** Subsection (b) of Section 1.6 is amended to read as follows:

“(b) Construction of the Public Improvements shall be complete, and preliminary construction acceptance of the Public Improvements shall be requested, by no later than October 31, 2022 (the “**Public Improvement Completion Deadline**”).

3. **Amendment to Section 1.13(a) of the Development Agreement.** The first sentence of Section 1.13(a) of the Development Agreement is amended to read as follows:

“Developer shall submit to the Town an Improvement Guarantee in the amount of \$264,246.40, together with such additional amounts attributable to the Alley Work as described in Section 4.2 of this Second Amendment, within ten (10) days of receipt of the proceeds from the Construction Loan or April 2, –2022, whichever occurs first (the “**Improvement Guarantee Deadline**”). Developer shall not commence any construction on the Development or Public Improvements prior to providing the Town with the Improvement Guarantee in the above-stated amount. Developer shall use commercially reasonable efforts to commence construction on the Lake Dillon Drive Public Improvements on or before August 30, 2022, weather permitting. If Developer fails to deliver the Improvement Guarantee by the Improvement Guarantee Deadline, in addition to any other remedies provided to Town under the Code, the Development Agreement or otherwise available under law or equity, Town shall have the right, but not the obligation, to complete the Public Improvements and the costs of such work, including administrative costs and reasonable attorney’s fees shall be a continuing and perpetual lien against the Development until such amount have been paid.

4. **Amendment to Section 8.6 of the Development Agreement.** Section 8.6 of the Development Agreement is amended to replace the Developer’s address for notices as follows:

Uptown 240 LLC

5. **Additional Developer Obligations.**

5.1 Should Developer fail to complete construction on the Public Improvements by the Public Improvement Completion Deadline, within fifteen (15) days of receiving written notice of the same from the Town, Developer shall remove all materials, construction equipment, trash dumpsters and trailers from Town-owned right-of-way, and relocate all fencing and barriers to

allow safe, public use of the sidewalk adjacent to the Development, all to the satisfaction of the Town Engineer. Developer must ensure fencing and barriers are relocated so as to protect pedestrians using the sidewalk and vehicles using the road within the public right-of-way from the uncompleted work on Developer's property. Because Developer has removed the retaining wall that supported the west side of the public sidewalk adjacent to the Lake Dillon Drive property line, subsequently making the sidewalk unsafe to walk on, the Developer shall re-establish the physical support mechanism on the Developer's property along the west side of the public sidewalk along the entire Lake Dillon Drive property line by either constructing a new retaining wall or installing another support solution designed by a licensed professional engineer.

5.2 Developer shall notify the Town in writing upon the Developer's discovery that the Bridge Loan will not close by December 15, 2021. Such notice shall contain the Developer's anticipated date of closing on the Bridge Loan.

5.3 If it becomes apparent to Developer that the Bridge Loan will not close with Developer's current financier, the Developer shall notify the Town in writing as soon as practicable, but in no event later than seven (7) days following the Developer's discovery of the same.

5.4 Should Developer fail to close on the Bridge Loan by December 31, 2021:

5.4.1 The Town shall have the right, but not the obligation, to remove all materials, construction equipment, trash dumpsters, trailers, fencing, barriers and any other items from Town-owned right-of-way, and to relocate such items to a safe storage area. The Town will notify Developer in writing prior to exercising the Town's right pursuant to this subsection, which notice shall indicate the location at which items removed from the Town-owned right-of-way will be stored. Developer agrees to indemnify and hold the Town harmless from any damage to such items, should the Town exercise its right pursuant to this subsection. Developer shall reimburse the Town for its costs related to the Town's exercise of its right under this subsection.

5.4.2 Developer shall provide to the Town Engineer for approval a written plan, developed in coordination with crane owner, for removing the crane from the site in the event that Developer fails to close on the Bridge Loan with Developer's current financier ("Crane Removal Plan").

5.5 Developer shall remove or cause to be removed the crane from Developer's property, in accordance with the Crane Removal Plan, if construction on the Development has not commenced by August 30, 2022, subject to one written extension by the Town Manager for good cause shown.

5.25.6 As part of the Developer's contractual obligation to construct Public Improvements necessitated by the impacts of the Development, Developer shall remediate the public safety

hazards caused by the settling of utility trenches within the Lake Dillon Drive right-of-way to the satisfaction of the Town Engineer.

5.35.7 Town shall use funds placed with the Town by Developer prior to the date of this Second Amendment as a partial Improvement Guarantee to place and maintain concrete jersey barricades along the south side of the 40' right-of-way between the Uptown 240 and Homewood Suites properties so as to protect pedestrians and vehicles using the Alley from the drop off between the Uptown 240 and Homewood Suites properties (the "**Alley Work**"). Costs incurred by the Town associated with the Alley Work will be added to the amount of the Improvement Guarantee due from Developer as set forth above.

5.45.8 Should Developer fail to comply with Sections 2, 3, and **4-5** of this Second Amendment, the Town may exercise its rights under the Development Agreement to complete the work and draw on the partial Letter of Credit Developer provided to the Town. The Town expressly retains and reserves all rights and remedies provided to the Town under the Development Agreement, as amended.

5.55.9 Developer shall pay to the Town all past due utility bills within ten (10) days of Developer's receipt of the Bridge Loan. The Town expressly retains and reserves all of its enforcement rights and remedies pursuant to Chapter 13 of the Dillon Municipal Code, and may exercise them for Developer's failure to pay any applicable utility charges.

5.65.10 Developer shall pay to the Town all attorneys' fees incurred by the Town between September 2019 and April 2021, (a) in review of plans and materials Developer was required to furnish to the Town in accordance with the Development Agreement, (b) in review and negotiation of the First Amendment, and (c) in review and negotiation of the Amended TIF Agreement, as required pursuant to Section 2-3-130 of the Dillon Municipal Code and Section 1.4(b) of the Development Agreement, within ten (10) days of Developer's receipt of the Bridge Loan.

5.75.11 Developer shall discharge any liens placed on Developer's property by the Town within ten (10) days of Developer's receipt of the Bridge Loan.

5.85.12 Developer shall reimburse the Town for all reasonable attorneys' fees incurred by the Town between April 2021 and the Effective Date, including but not limited to all attorneys' fees incurred by the Town in reviewing and negotiating this Second Amendment, as required pursuant to Section 2-3-130 of the Dillon Municipal Code and Section 1.4(b) of the Development Agreement, within thirty (30) days of invoicing by the Town. The Developer's obligation to pay attorneys' fees incurred by the Town in connection with the Development is a continuing obligation throughout the term of the Development Agreement, as amended.

6. Miscellaneous.

6.1 Capitalized Terms. Capitalized terms not defined in this Second Amendment have the meanings given them in the Development Agreement.

6.2 Governing Law. This Second Amendment and all matters arising hereunder or in connection herewith shall be governed by and construed and enforced in accordance with the laws of the State of Colorado.

6.3 Ratification. Except as amended by this Second Amendment, the Development Agreement, as amended by the First Amendment, is hereby ratified and affirmed and shall continue in full force and effect. All references to the “Development Agreement” will be deemed to refer to the Development Agreement as amended by the First Amendment and this Second Amendment.

6.4 Successors and Assigns. This Second Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

6.5 Effect of Headings. Headings appearing in this Second Amendment are inserted for convenience of reference only and shall in no way be construed to be interpretations of the provisions hereof.

6.6 Counterparts. This Second Amendment may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment as of the Effective Date.

Town:

THE TOWN OF DILLON, COLORADO,
a Colorado home rule municipal corporation

By: _____
Mayor _____

ATTEST:

Town Clerk

Developer:

UPTOWN 240 LLC,
a Colorado limited liability company

By: _____

Printed Name: _____

Title: _____